

64-13-41 Limitations on offender access to sexually explicit material.

(1) As used in this section:

(a)

- (i) "Commercially published information or material" means any book, booklet, pamphlet, magazine, periodical, newsletter, or similar document, including stationery and greeting cards, and video and audio tapes, disks, or other recording, that is distributed or made available through any means or media for a commercial purpose.
- (ii) "Commercially published information or material" includes an extraction, photocopy, clipping, or electronically created copy made from any of the items under Subsection (1)(a)(i).

(b)

- (i) "Features nudity" means the information or material:
 - (A) that, in the case of a one-time publication or issue, promotes itself based upon depictions of nudity or sexually explicit conduct; or
 - (B) that, in the case of information or material other than under Subsection (1)(b)(i)(A), contains depictions of nudity or sexually explicit conduct on a routine or regular basis.
- (ii) The department may by rule, pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, exclude from the definition in Subsection (1)(b)(i) information or material containing nudity that is illustrative of medical, educational, or anthropological content.
- (c) "Nudity" means a pictorial depiction where genitalia or female breasts are exposed.
- (d) "Offender" means any person who has been convicted of a crime and is housed in a prison, jail, youth detention facility, or community correctional center.
- (e) "Sexually explicit" means a pictorial depiction of actual or simulated sexual acts, including sexual intercourse, sodomy, or masturbation.
- (f) "State funds" means state or local funding provided to the department, and includes legislative appropriations to the department, dedicated credits, grants, and money for jail reimbursement to county correctional facilities under Title 64, Chapter 13, Department of Corrections - State Prison, private providers, and contractors.

(2) State funds may not be used to distribute or make available any commercially published information or material to an offender when the state employee, contractor, or private provider who has the authority to expend the funds knows that the commercially published information or material is sexually explicit or features nudity.

(3)

- (a) When the department rejects commercially published information or material for distribution to an offender under this section, the department shall advise the publisher or sender that it may request reconsideration by the department of the decision to reject the material. However, the department need advise the publisher or sender only once in the case of information or material that on a routine or regular basis either depicts sexually explicit material or features nudity.
- (b) The department shall make rules pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish an administrative reconsideration process.
- (c) For purposes of extraordinary relief under Rule 65B, Utah Rules of Civil Procedure, this administrative reconsideration process is a plain, speedy, and adequate legal remedy that must be exhausted before extraordinary relief is available.
- (d) There is no right to judicial review of the department's decision under this section to reject material for distribution.

(4) This section does not apply to sexually explicit material used under Section 76-10-1207.5 for the assessment or treatment of an offender.

Amended by Chapter 382, 2008 General Session